

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID DIWBY,

Plaintiff,

-against-

**RULE 68
OFFER OF JUDGMENT**

THE CITY OF NEW YORK; NEW YORK CITY POLICE
DETECTIVE LAWRENCE AVVENIRE, Shield No.
10498; NEW YORK CITY POLICE SERGEANT "FNU"
[First Name Unknown] SINATRA; NEW YORK CITY
POLICE DETECTIVE ERIC MOY, Shield No. 02788;
JOHN DOES; RICHARD ROES,

17 Civ. 9808 (LGS)

Defendants.

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Pursuant to Rule 68 of the Federal Rules of Civil Procedure, defendants City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy hereby offer to allow plaintiff David Diwby to take a judgment against the City of New York on the terms specified herein.

This offer of judgment shall be entered against the City of New York only, in the amount of Ten Thousand and One (\$10,001.00) Dollars, plus reasonable attorneys' fees, expenses, and costs to the date of this offer for plaintiff David Diwby's federal claims.

This judgment shall be in full satisfaction of all federal and state law claims or rights that plaintiff may have to damages, or any other form of relief, arising out of the alleged acts or omissions of defendants City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy, or any official, employee, or agent, either past or present, of the City of New York, or any agency thereof, in connection with the facts and circumstances that are the subject of this action.

This offer of judgment may only be accepted up to and including July 12, 2018.

This offer of judgment is made for the purposes specified in Rule 68 of the Federal Rules of Civil Procedure and is not to be construed as an admission of liability by defendants City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy, or any official, employee, or agent of the City of New York, or any agency thereof; nor is it an admission that plaintiff has suffered any damages.

Acceptance of this offer of judgment will act to release and discharge defendants City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York, or any agency thereof, from any and all claims that were or could have been alleged by plaintiff arising out of the facts and circumstances that are the subject of this action.

Acceptance of this offer of judgment also will operate to waive plaintiff's rights to any claim for interest on the amount of the judgment.

Plaintiff David Diwby agrees that payment of Ten Thousand and One (\$10,001.00) Dollars within ninety (90) days of the date of acceptance of the offer shall be a reasonable time for such payment, unless plaintiff received medical treatment in connection with the underlying claims in this case for which Medicare has provided, or will provide, payment in full or in part. If plaintiff David Diwby is a Medicare recipient who received medical treatment in connection with the claims in this case, the ninety (90) day period for payment shall start to run from the date plaintiff submits to counsel for defendant City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy a final demand letter from Medicare.

By acceptance of this Rule 68 Offer of Judgment, plaintiff David Diwby agrees to resolve any claim that Medicare may have for reimbursement of conditional payments it has made as secondary payer, and a Medicare Set-Aside Trust shall be created, if required by 42

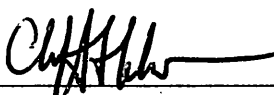
U.S.C. § 1395y(b) and 42 C.F.R. §§ 411.22 through 411.26. Plaintiff David Diwby further agrees to hold harmless defendants City of New York, Lawrence Avvenire, Mark Sinatra, and Eric Moy and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, regarding any past and/or future Medicare payments, presently known or unknown, made in connection with this matter.

The judgment shall contain and recite the terms and conditions set forth herein.

Dated: New York, New York
June 28, 2018

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
*Attorney for City of New York, Lawrence Avvenire,
Mark Sinatra, and Eric Moy*
100 Church Street, Room 3-200
New York, New York 10007
(212) 356-5044

By



Christopher G. Arko
Senior Counsel

To: VIA HAND DELIVERY
Jeffrey Rothman, Esq.
Attorney for Plaintiff
315 Broadway, Suite 200
New York, New York 10007

Jeffrey A. Rothman
Attorney at Law
315 Broadway, Suite 200
New York, NY 10007
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June 29, 2018

By Email and Hand Delivery To:

Christopher Arko, Esq.
Assistant Corporation Counsel
NYC Law Department
Special Federal Litigation Division
100 Church Street
New York, NY 10007

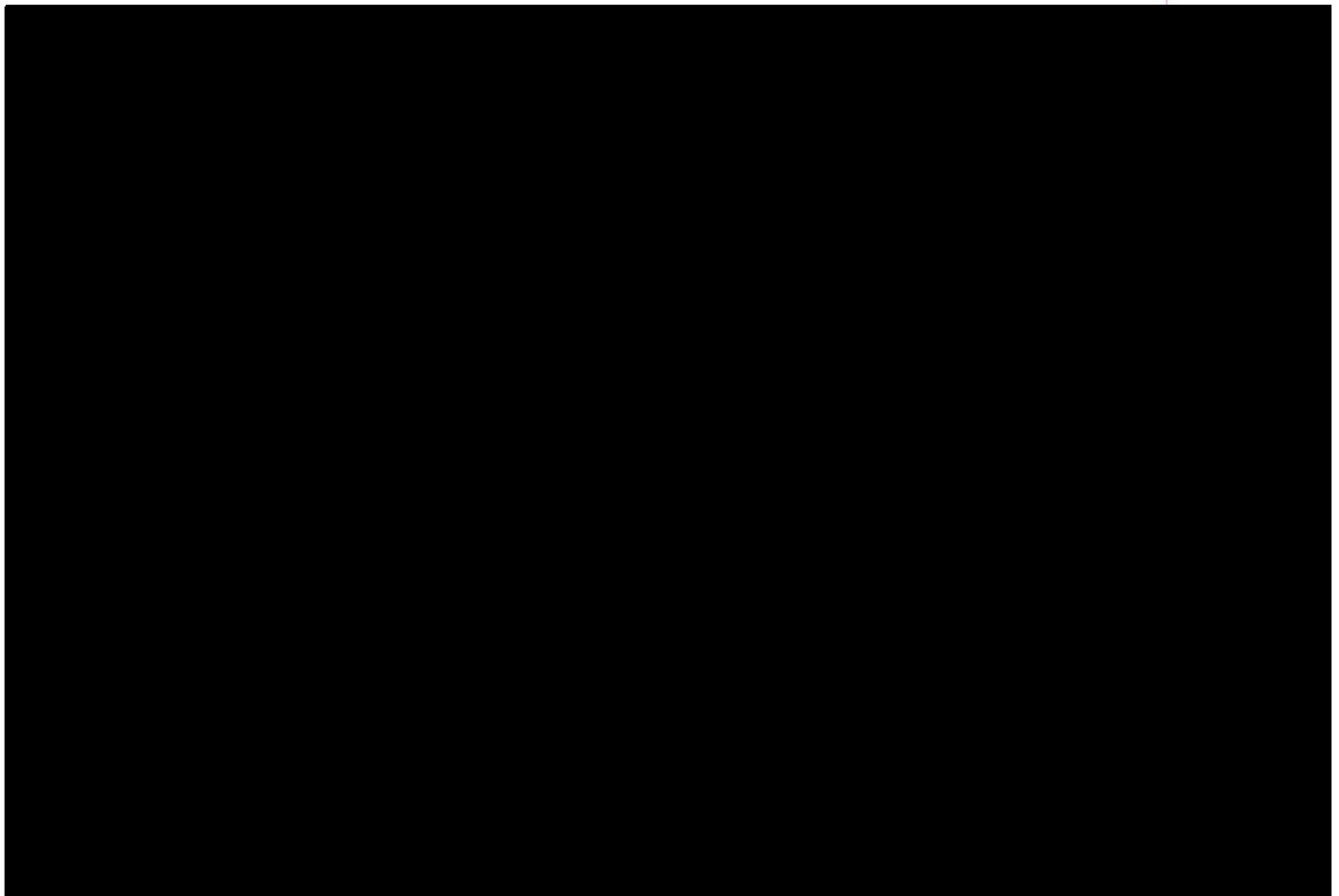
Re: Diwby v. City of New York, et al., 17 Civ. 9808 (LGS) (DCF)

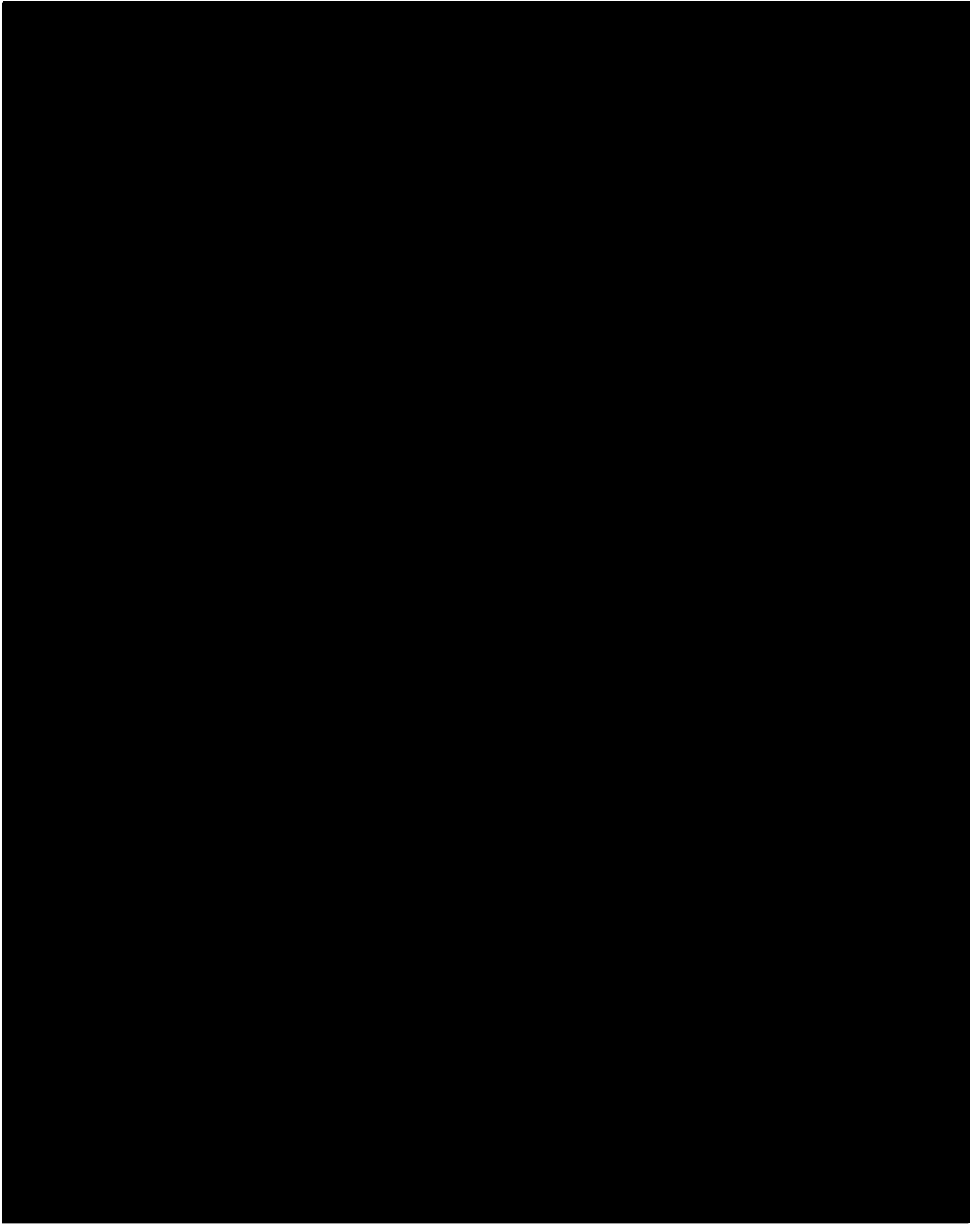
Dear Christopher:

Plaintiff hereby accepts Defendants' Rule 68 Offer of Judgment of June 28, 2018.

2018 JUN 29 PM 1:00

CITY OF N.Y. LAW DEPT.
OFFICE OF CORP. COUNSEL
COMMUNICATIONS UNIT

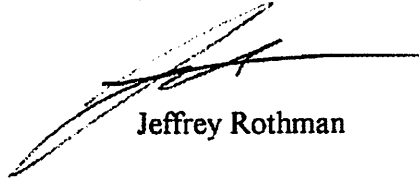




[REDACTED]

Thank you for your consideration in this matter.

Sincerely yours,



Jeffrey Rothman

encs.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID DIWBY,

Plaintiff,

-against-

PROOF OF SERVICE

THE CITY OF NEW YORK; NEW YORK CITY
POLICE DETECTIVE LAWRENCE AVVENIRE,
Shield No. 10498; NEW YORK CITY POLICE
SERGEANT "FNU" [First Name Unknown]
SINATRA; NEW YORK CITY POLICE DETECTIVE
ERIC MOY, Shield No. 02788; JOHN DOES;
RICHARD ROES,

17cv9808 (LGS)

Defendants.

- - - - -X

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

I, Jeffrey A. Rothman, hereby affirm under the penalties of perjury:

I am not a party to this action, I am over 18 years of age and I am self-employed as an attorney at 315 Broadway, Suite 200; New York, New York, 10007. I am counsel for the Plaintiff in the above-captioned action, and am admitted to practice in the United States District Court for the Southern District of New York.

On June 29, 2018, at 1:00 p.m., at the New York City Law Department, 100 Church Street, New York, NY 10007, I served Plaintiff's acceptance of Defendants' Rule 68 Offer of Judgment, by personally delivering and leaving a true copy or copies of the aforementioned document with a clerk authorized to accept service, who time-stamped the document to acknowledge receipt of same.

September 14, 2018


Jeffrey A. Rothman